

AMENDED IN SENATE APRIL 4, 2005

**SENATE BILL**

**No. 797**

**Introduced by Senator Romero**

February 22, 2005

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An act to amend Section ~~19.8 of the Penal~~ 11357 of the Health and Safety Code, and to amend Section 23222 of the Vehicle Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Romero. Crimes: *marijuana: possession: penalty.*

*Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100, and if that person has been previously convicted 3 or more times of that offense during the previous 2 years and has been found guilty of the current offense after a trial, or has admitted guilt, the person is eligible for diversion, as specified.*

*This bill would instead provide that (a) except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of an infraction or a misdemeanor punishable by a fine not to exceed \$250, and is, for the 2nd or any subsequent offense, guilty of a misdemeanor punishable by a fine not to exceed \$250; and (b) if that person has been previously convicted 2 or more times of that offense during the previous 2 years, the previous convictions shall also be charged in the accusatory pleading and if the person is charged with a misdemeanor, he or she shall be eligible for diversion, as specified. The bill would make conforming changes to related provisions. To the extent that this bill would increase the duties of local officers by providing for the diversion of offenders after a 2nd rather than 3rd offense, this bill*

would impose a state-mandated local program upon local governments.

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law defines which offenses are infractions and what the punishment shall be for violation of those offenses.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 19.8 of the Penal Code is amended to~~  
2 ~~read:~~

3 *SECTION 1. Section 11357 of the Health and Safety Code is*  
4 *amended to read:*

5 11357. (a) Except as authorized by law, every person who  
6 possesses any concentrated cannabis shall be punished by  
7 imprisonment in the county jail for a period of not more than one  
8 year or by a fine of not more than five hundred dollars (\$500), or  
9 by both ~~such~~ that fine and imprisonment, or shall be punished by  
10 imprisonment in the state prison.

11 (b) (1) Except as authorized by law, every person who  
12 possesses not more than 28.5 grams of marijuana, other than  
13 concentrated cannabis, is, *for the first offense*, guilty of an  
14 *infraction* or a misdemeanor and shall be punished punishable by  
15 a fine of not more than one hundred dollars (\$100) not to exceed  
16 two hundred fifty dollars (\$250), and is, *for the second or*  
17 *subsequent offense*, guilty of a misdemeanor punishable by a fine  
18 *not to exceed two hundred fifty dollars (\$250).* ~~Notwithstanding~~

19 (2) *Notwithstanding* other provisions of law, if ~~such~~ that  
20 person has been previously convicted ~~three~~ two or more times of  
21 an offense described in this subdivision during the two-year

1 period immediately preceding the date of commission of the  
 2 violation to be charged, the previous convictions shall also be  
 3 charged in the accusatory pleading ~~and, if found to be true by the~~  
 4 ~~jury upon a jury trial or by the court upon a court trial or if~~  
 5 ~~admitted by the person, . If the defendant is charged with a~~  
 6 ~~misdemeanor, the provisions of Sections 1000.1 and 1000.2 1000~~  
 7 ~~to 1000.5, inclusive, of the Penal Code shall be applicable to him,~~  
 8 ~~and the court shall divert and refer him for education, treatment,~~  
 9 ~~or rehabilitation, without a court hearing or determination or the~~  
 10 ~~concurrence of the district attorney, to an appropriate community~~  
 11 ~~program which will accept him. If the person is so diverted and~~  
 12 ~~referred he shall not be subject to the fine specified in this~~  
 13 ~~subdivision. If no community program will accept him, the~~  
 14 ~~person shall be subject to the fine specified in this subdivision~~  
 15 ~~apply to the matter.~~ In any case in which a person is arrested for  
 16 a violation of this subdivision and does not demand to be taken  
 17 before a magistrate, ~~such~~ the person shall be released by the  
 18 arresting officer upon ~~presentation of~~ presenting satisfactory  
 19 evidence of identity and giving ~~his~~ a written promise to appear in  
 20 court, as provided in Section 853.6 of the Penal Code, and shall  
 21 not be subjected to booking.

22 (c) Except as authorized by law, every person who possesses  
 23 more than 28.5 grams of marijuana, other than concentrated  
 24 cannabis, shall be punished by imprisonment in the county jail  
 25 for a period of not more than six months or by a fine of not more  
 26 than five hundred dollars (\$500), or by both ~~such~~ that fine and  
 27 imprisonment.

28 (d) Except as authorized by law, every person 18 years of age  
 29 or over who possesses not more than 28.5 grams of marijuana,  
 30 other than concentrated cannabis, upon the grounds of, or within,  
 31 any school providing instruction in kindergarten or any of grades  
 32 1 through 12 during hours the school is open for classes or  
 33 school-related programs is guilty of a misdemeanor and shall be  
 34 punished by a fine of not more than five hundred dollars (\$500),  
 35 or by imprisonment in the county jail for a period of not more  
 36 than 10 days, or both.

37 (e) Except as authorized by law, every person under the age  
 38 of 18 who possesses not more than 28.5 grams of marijuana,  
 39 other than concentrated cannabis, upon the grounds of, or within,  
 40 any school providing instruction in kindergarten or any of grades

1 1 through 12 during hours the school is open for classes or  
2 school-related programs is guilty of a misdemeanor and shall be  
3 subject to the following dispositions:

4 (1) A fine of not more than two hundred fifty dollars (\$250),  
5 upon a finding that a first offense has been committed.

6 (2) A fine of not more than five hundred dollars (\$500), or  
7 commitment to a juvenile hall, ranch, camp, forestry camp, or  
8 secure juvenile home for a period of not more than 10 days, or  
9 both, upon a finding that a second or subsequent offense has been  
10 committed.

11 *SEC. 2. Section 23222 of the Vehicle Code is amended to*  
12 *read:*

13 23222. (a) No person shall have in his or her possession on  
14 his or her person, while driving a motor vehicle upon a highway  
15 or on lands, as described in subdivision (b) of Section 23220, any  
16 bottle, can, or other receptacle, containing any alcoholic beverage  
17 which has been opened, or a seal broken, or the contents of  
18 which have been partially removed.

19 (b) (1) Except as authorized by law, every person who  
20 possesses, while driving a motor vehicle upon a highway or on  
21 lands, as described in subdivision (b) of Section 23220, not more  
22 ~~than one avoirdupois ounce~~ 28.5 grams of marijuana, other than  
23 concentrated cannabis as defined by Section 11006.5 of the  
24 Health and Safety Code, is, *for a first offense*, guilty of an  
25 *infraction* or a misdemeanor ~~and shall be punished~~ punishable by  
26 a fine of not more than ~~one hundred dollars (\$100)~~ two hundred  
27 *fifty dollars (\$250)*, and is, *for the second or any subsequent*  
28 *offense, guilty of a misdemeanor punishable by a fine not to*  
29 *exceed two hundred fifty dollars (\$250).* ~~Notwithstanding~~

30 (2) *Notwithstanding* any other provision of law, if the person  
31 has been previously convicted ~~three~~ two or more times of an  
32 offense described in this subdivision during the two-year period  
33 immediately preceding the date of commission of the violation to  
34 be charged, the previous convictions shall also be charged in the  
35 accusatory pleading ~~and, if found to be true by the jury upon a~~  
36 ~~jury trial or by the court upon a court trial or if admitted by the~~  
37 ~~person, Sections 1000.1 and 1000.2 of.~~

38 (3) *If the defendant is charged with a misdemeanor, the*  
39 *provisions of Sections 1000 to 1000.5, inclusive, of the Penal*  
40 *Code are applicable to the person, and the court shall divert and*

1 ~~refer the person for education, treatment, or rehabilitation,~~  
2 ~~without a court hearing or determination or the concurrence of~~  
3 ~~the district attorney, to an appropriate community program which~~  
4 ~~will accept the person. If the person is so diverted and referred,~~  
5 ~~the person is not subject to the fine specified in this subdivision.~~  
6 ~~It shall apply to the matter.~~

7 (4) In any case in which a person is arrested for a violation of  
8 this subdivision and does not demand to be taken before a  
9 magistrate, the person shall be released by the arresting officer  
10 upon presentation of satisfactory evidence of identity and giving  
11 his or her written promise to appear in court, as provided in  
12 Section 40500, and shall not be subjected to booking.

13 *SEC. 3. If the Commission on State Mandates determines that*  
14 *this act contains costs mandated by the state, reimbursement to*  
15 *local agencies and school districts for those costs shall be made*  
16 *pursuant to Part 7 (commencing with Section 17500) of Division*  
17 *4 of Title 2 of the Government Code.*

18 ~~19.8. The following offenses are subject to subdivision (d) of~~  
19 ~~Section 17: Sections 193.8, 330, 415, 485, 555, and 853.7, of this~~  
20 ~~code; subdivision (m) of Section 602 of this code; subdivision (b)~~  
21 ~~of Section 25658 and Sections 21672, 25658.5, 25661, and~~  
22 ~~25662 of the Business and Professions Code; Section 27204 of~~  
23 ~~the Government Code; subdivision (e) of Section 23109 and~~  
24 ~~Sections 12500, 14601.1, 27150.1, 40508, and 42005 of the~~  
25 ~~Vehicle Code, and any other offense which the Legislature~~  
26 ~~makes subject to subdivision (d) of Section 17. Except where a~~  
27 ~~lesser maximum fine is expressly provided for violation of any of~~  
28 ~~those sections, any violation which is an infraction is punishable~~  
29 ~~by a fine not exceeding two hundred fifty dollars (\$250).~~

30 ~~Except for the violations enumerated in subdivision (d) of~~  
31 ~~Section 13202.5 of the Vehicle Code, and Section 14601.1 of the~~  
32 ~~Vehicle Code based upon failure to appear, a conviction for any~~  
33 ~~offense, made an infraction under subdivision (d) of Section 17,~~  
34 ~~is not grounds for the suspension, revocation, or denial of any~~  
35 ~~license, or for the revocation of probation or parole of the person~~  
36 ~~convicted.~~

37 ~~This section shall become operative on January 1, 2005.~~